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CHARLES ELMORE CRO
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IN THE

SUPREME COURT OF THE UNITED STATES.

JOE A. MAY and LEE MAY,
Petitioners,
vs.
JOHN M. PARKER COMPANY, INC.,
Respondent.

No. 411.

PETITION FOR WRIT OF CERTIORARI
and
BRIEF IN SUPPORT.

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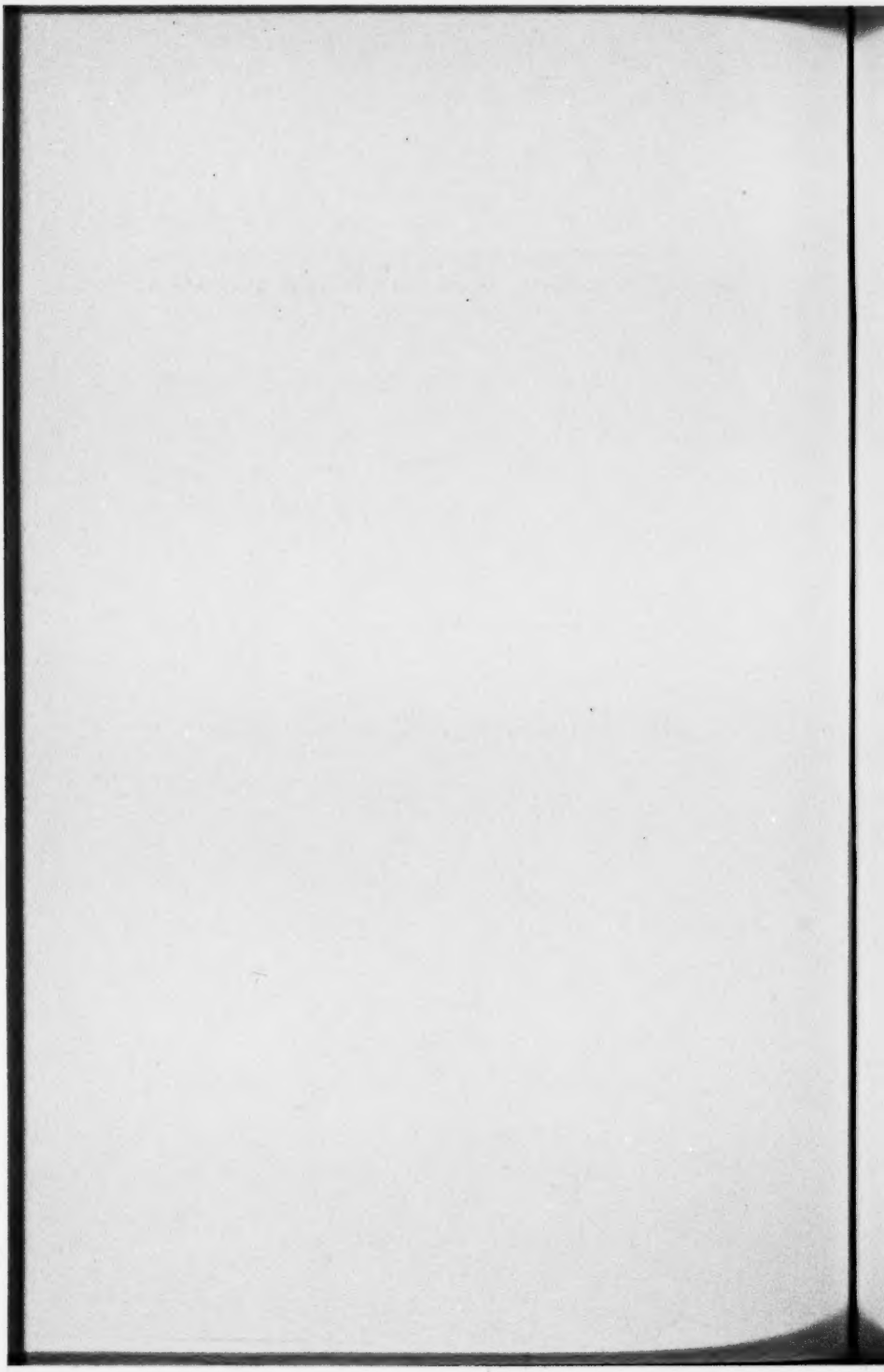

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PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

Petitioners Joe A. May and Lee May pray that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit in the above cause.

JURISDICTION.

Jurisdiction is invoked under the Judicial Code, Section 240; Section 347, Title 28, U. S. Code Annotated, and Rule 38, Paragraph 5 (b), Revised Rules of this Court, effective February 27, 1939.

QUESTIONS PRESENTED.

This case involves the question of existence of the power in the Commodity Credit Corporation, a corporate agency of the Government of the United States organized to assist

in carrying out the provisions and effectuating the purposes of the Agricultural Adjustment Act of 1938, 7 U. S. C. A. 1302, to prohibit, by duly published regulation, the vesting of any property interest in the assignee of any producer of agricultural products upon whose commodity a loan had been made, or to divest any title or interest existing prior to the regulation, if such transfers were permitted, and the question as to whether or not any such sales or assignments are not void against public policy. There is also involved the question of whether or not the contracts, "delivery orders," constituted sales or mere options to purchase. The questions arise out of the facts set forth in the statement of the case.

STATEMENT OF THE CASE.

In the year 1938 the petitioners produced, on their plantations in Sunflower County, Mississippi, 2,632 bales of cotton. They were producers and co-operators within the meaning of the Agricultural Adjustment Act (R. 202-203). Instead of selling the cotton on the market, the petitioners, in accordance with the provisions of the Agricultural Adjustment Act and the rules and regulations of the Commodity Credit Corporation, borrowed money from the Planters Bank and Trust Company of Ruleville, Mississippi, and pledged, to secure the loans, negotiable warehouse receipts issued by the warehouses wherein said cotton had been stored (R. 203). The bank making the loans was a lending agency of the Commodity Credit Corporation, and the loan notes and agreements were executed on forms required by the Commodity Credit Corporation (R. 203). These notes, together with the pledged warehouse receipts, were acquired by the Commodity Credit Corporation in the year 1939 and held by it until payment thereof on May 23, 1941.

The loans were evidenced by some seventy-one different notes, each note being identical except as to date, amount and description of the collateral. The form of the note is

found in record, pages 33 to 43. Each note matured on July 31, 1939 (R. 205). In 1939 the maturity date was extended by the Commodity Credit Corporation to July 31, 1940 (R. 205), and on April 3, 1940, the maturity date of each note was extended to July 31, 1941 (R. 25, 205-206).

The loan agreement, which was part of the same instrument containing the loan note, had in it several provisions dealing with the rights and liabilities of the holder of the loan note and agreement, and the producers so having executed same, respectively, and, among other provisions, is the one found in paragraph 5 (R. 39). This paragraph deals with what is to be done by the holder of the note with the proceeds of the sale of the collateral pledged in the event the indebtedness evidenced by the note is not paid when due, and it reads as follows:

> "5. After deducting all fees, costs and expenses incident to insuring, carrying, handling, and marketing the collateral and accounting to the undersigned producer, including all reasonable attorneys' fees, the holder shall apply the residue of any sales proceeds or insurance proceeds toward the payment of the abovementioned note, returning the overplus, if any, only to the undersigned, or his personal representatives, without right of assignment or substitution of any other party. * * *"

This quoted excerpt discloses that the rights of the producer of the cotton who has pledged same to secure a loan were not freely assignable.

The Director of the Commodity Credit Corporation was G. E. Rathell, whose deposition was taken and appears in the record, pages 22 to 51.

These loans were made pursuant to the Agricultural Adjustment Act of 1938, 7 U. S. C. A. 1302 (c), and, according to its terms, loans could be made only to producers of cotton, and then only on such cotton as was grown by such producer.

Most of the loans were consummated in the fall of 1938; a few in the early part of 1939 (R. 173).

Ben K. Pearce & Bro., cotton factors of Greenwood, Mississippi, during the latter part of December, 1939, entered into negotiations with the petitioners, which were consummated on January 2, 1940, whereby, in consideration of the sum of $5,264, the petitioners executed, at the request of Ben K. Pearce & Bro., in favor of respondent, seventy-one delivery orders, each of which was identical in form (except as to the dates of the respective notes, the number of bales of cotton pledged to secure same, and the amount of each note) (R. 204). These orders were as follows:

"Lombardy, Miss., Jan. 2, 1940.

"To: Commodity Credit Corporation, or
Other Holder of note or notes.

"Gentlemen:

"This is your authority to release to Jno. M. Parker Co., New Orleans, La. Five bales of cotton securing our note date 1/9/39 for $228.28 made payable to Planters Bank & Trust Co., Ruleville, Miss., upon the payment of same by them with accrued charges to the date of such release.

(Signed) May Brothers,
By J. A. May,
Member of Firm,

(Signed) Ben K. Pearce,
Witness

Bought By:
Jno. M. Parker Co.,
Buyer."

Ben K. Pearce & Bro. then delivered the orders to respondent (R. 56).

The complaint charged that, in the negotiations just referred to, Ben K. Pearce & Bro. was the agent for petition-

ers (R. 2). The pleadings interposed on behalf of the petitioners specifically denied that Ben K. Pearce & Bro. was the agent of petitioners. On this disputed question the court found that Ben K. Pearce & Bro. did not represent the petitioners (R. 205 and 209).

At the time of the acquisition by respondent of the so-called orders on which it based its rights to recover, respondent and Ben K. Pearce & Bro. knew that the notes evidencing the loans, which were secured by pledge of the warehouse receipts, matured on July 31, 1940, and that the right of respondent to pay the loan and get possession of and title to the warehouse receipts would have to be exercised on or before July 31, 1940 (R. 205).

On April 3, 1940, the maturity dates of the notes were extended to July 31, 1941 (R. 25). This extension was made known to the public in the form of a press release (R. 43-44). The action of the Commodity Credit Corporation in extending the loan was given publicity on April 3, 1940, by an announcement (R. 43) reading as follows:

> "Washington, D. C., April 3, 1940.
>
> "CCC Extends Loan on 1938 Cotton.
>
> "Commodity Credit Corporation announced today that the maturity of its loans on 1938 crop cotton has been extended one year to July 31, 1941. * * *
>
> "It was also announced by the Commodity Credit Corporation that after July 31, 1940, no request for the release of loan cotton to any person other than the producer will be accepted unless the request is submitted to the Corporation or its agent, on a standard form to be printed and provided by the Corporation, within fifteen days after it has been executed by the producer.
>
> "Officials of the Corporation pointed out that by deferring this necessary use of a standard release form until after July 31, 1940, there would be no interference with the release of cotton requested on other forms

executed and presented prior to July 31, 1940, the maturity date in effect heretofore when release forms were executed by producers."

Respondent had actual knowledge of this extension to July 31, 1941, and of the conditions thereof (R. 94).

The value of the cotton under pledge to the Commodity Credit Corporation was not such at any time during the year 1940 that the loans could be paid with a profit. The amount of the indebtedness owing on the cotton, together with the accrued charges, was more than the market value of the cotton (R. 206). The respondent did not, on or before July 31, 1940, and, in fact, not until May, 1941, make any attempt to redeem the cotton from the Commodity Credit Corporation (R. 94, 206-207). During the year 1941 and shortly before May 6th, a request was made of the petitioners that they execute, in favor of respondent, orders for release of the cotton on forms required by the Commodity Credit Corporation and referred to in such corporation's extension order of April 3, 1940 (R. 176). The petitioners refused to execute these orders (R. 177). Thereafter, on May 23, 1941, petitioners executed an order of release on forms required by the Commodity Credit Corporation, being referred to in the record as CCC Cotton Form R, to Bibb and Delap, in consideration of the payment to petitioners of the sum of $9.00 per bale (R. 179). The form of instrument required by the Commodity Credit Corporation to be used in order for cotton to be released after July 31, 1940, to anyone other than a producer, known as CCC Cotton Form R, is in evidence (R. 48-51). This form was required to be executed by both the producer and the purchaser desiring to redeem the cotton pledged to the corporation. It called attention to the fact that such executed form was the authority of the producer to any other person to redeem cotton warehouse receipts then under pledge to the Commodity Credit Corporation. It recited that, on the date of the

execution thereof, the producer, subject to the pledgee's interest of the Commodity Credit Corporation, had sold to the person tendering such form all of the producer's right, title and interest in and to the cotton represented by the warehouse receipts. The form further provided that the producer should state therein the amount that he had received as a consideration for the making of the transfer. The person who purchased the producer's right to redeem was required by the form to state that such purchase was made on the date the form was executed, and, further, that he, the purchaser, had on that day paid such sum as represented the consideration.

The officers having in charge the attainment of the result sought through the agency of the Commodity Credit Corporation construed their powers as including, first, the power to prohibit the assignability of rights in pledged commodities, and, second, the power to divest the claim, if any vested, of those who became assignees of such rights prior to a regulation refusing recognition of claim or title in such assignees, upon notice given and reasonable opportunity to redeem the pledged commodities before the defeasance regulation was put into effect. This is the construction given by the Commodity Credit Corporation as to the claim of the respondent to the cotton in the instant case.

Respondent never presented the delivery orders of January 2, 1940, to the Commodity Credit Corporation until May 7, 1941 (R. 83-84). The Commodity Credit Corporation refused to deliver the warehouse receipts on such orders (R. 87-88) because so to do would have been inconsistent with and in violation of the regulation of April 3, 1940, which regulation established the policy as to the delivery of warehouse receipts after July 31, 1940, to anyone other than the producer.

On May 23, 1941, petitioners executed Cotton Form R (R. 179) to Bibb and Delap, cotton buyers, and these forms

were honored by the Commodity Credit Corporation, and the warehouse receipts were delivered to the holders thereof.

For the convenience of the Court, the appendix is referred to for the statements made by the President and the Managing Director of the Commodity Credit Corporation, respectively, which fully explain that the adoption and enforcement of the regulation of April 3, 1940, restricting the rights of assignees was for the purpose of more effectively accomplishing the policy of Congress in dealing with pledged commodities under the Agricultural Adjustment Act of 1938 and of preventing the thwarting of such policy by those claiming as assignees of the producers of such commodities.

Respondent sued petitioners in the District Court for the Delta Division of the Northern District of Mississippi, seeking in the first count to recover the value of the cotton as for conversion; in the second, the amount received by petitioners for it, and in the third the sum paid for the delivery orders (R. 1-12).

The District Court entered judgment for petitioners, holding, in effect, that respondent had no title to the cotton after July 31, 1940, and entered judgment for petitioners, holding that the regulations requiring Cotton Form R were legal (R. 209, 210).

The Circuit Court of Appeals reversed the judgment of the lower court and held that the contracts between petitioners and respondent constituted sales of the cotton and not options; that such sales were not illegal because of any public policy of the United States, and, by necessary effect, that non-compliance with the regulation of April 3, 1940, did not and could not divest the title to the cotton which was held to have vested under the delivery orders of January 2, 1940 (opinion of the court, R. 225-231, 128 Fed. [2d]

1020). The court held that, while it might be a justifiable regulation "for the simplification and protection against its operations," it could not annul vested rights as between petitioners and respondent.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

This case presents questions of the first importance relating to the extent of the power of the Commodity Credit Corporation to prohibit the vesting of title, either legal or equitable, to commodities pledged as security for loans, and the right, if such interests have been transferred, to divest them, when necessary for the attainment of the ends sought to be obtained by the Agricultural Adjustment Act of 1938. The questions have not been passed upon heretofore, and an early authoritative decision and a definition of the extent of such powers sought to be exercised are of the utmost importance not only to the parties to this cause, but also to the Commodity Credit Corporation for its guidance in the future.

The decision of the Circuit Court of Appeals is also contrary to principles set forth in decisions of this court. (See accompanying brief.)

In the interest of brevity (Rule 38, par. 2), petitioners do not set forth all the points which will be urged at the argument on the merits of this cause, should the writ be granted, particularly that the delivery orders constituted mere options, but in order to conform to the rule of this court that all issues upon which decision is requested be presented in the petition for certiorari, petitioners here refer to and incorporate into this petition the point that the delivery orders were mere options, and the point that such orders could not be treated as contracts for the sale of the cotton as being insufficient under the statute of

frauds of Mississippi, Section 3347, Code 1930 (see appendix), and the point that there was no verbal contract of sale with a part of the purchase price paid.

Wherefore, your petitioners respectfully pray that this petition be granted.

Respectfully submitted,

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